

Contract Number *[Contract Number]*

for

***[Computer and/or Telecommunications
Equipment and Associated Services]***

Between the

[Agency]

and

[Name Of Vendor]

Effective date: _____

(add date when signed by last party of execution)

EQUIPMENT PURCHASE CONTRACT

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EXHIBITS

Exhibit A: *[Name Of Acquisition]* Request For *[Proposal/Quotation/Quotation and Qualification]*
Exhibit B: Vendor's Proposal for *[Name Of Acquisition]*

Note: Exhibits A and B are not attached but are available upon request from the Purchaser Contract Administrator

Table of Contents– To list and identify the provisions contained within the contractThis section, at the beginning of the contract, should contain a categorical list of all the provisions contained in contract with page number references

[SAMPLE]

EQUIPMENT PURCHASE CONTRACT
NUMBER [XXX-XXX-XXX]

PARTIES*(required term)*

This Equipment Purchase Contract (hereinafter referred to as "Contract") is entered into by and between the state of Washington, acting by and through **[Agency Name]**, an agency of Washington State government (hereinafter referred to as "Purchaser" or "**[Agency Name]**" or "**[Department/Commission/Board]**") located at P.O. Box 4[xxxx], Olympia, Washington, 98504[xxxx], and **[Vendor's Name]**, a *[corporation/sole proprietor or other business form]* with TIN *[FEIN # or SSN in lieu]* licensed to conduct business in the state of Washington under UBI number *[UBI number]* (hereinafter referred to as "Vendor"), located at *[list Vendor's address here]* for the purpose of *[list purpose of Vendor's business]*

This section identifies the parties entering into the contract. It states the name of the Purchaser, the Vendor's legal corporate name and address, state Uniform Business Identifier number (issued by the Department of Revenue), and the Federal Tax Identification number or Social Security number of the Vendor.

RECITALS

WHEREAS, the state of Washington, acting by and through **[Agency Name]**, issued a Request for *[Proposal/Quotation/Quotations and Qualifications]* *[(RFP)/(RFQ)/(RFQQ)]* dated *[Date]*, (Exhibit A) for the purpose of obtaining *[describe purpose of Acquisition]* in accordance with its authority under chapter 43.105 RCW; and,

WHEREAS, the **[Vendor's Name]** submitted a timely proposal to the **[Agency Name]**'s *[RFP/RFQ/RFQQ]* (Exhibit B); and,

WHEREAS, the **[Agency Name]** evaluated all proposals properly submitted in response to the above-referenced *[RFP/RFQ/RFQQ]* and has identified **[Vendor's Name]** as the apparently successful Vendor; and,

WHEREAS, the **[Agency Name]** has determined that entering into a Contract with **[Vendor's Name]** will meet the needs of the Purchaser and will be in the Purchaser's best interest;

[If not a competitive acquisition, discuss Sole Source or other procurement method in place of the above Recitals.]

NOW THEREFORE, the Purchaser awards to **[Vendor's Name]** this Equipment Purchase Contract which shall govern Vendor's furnishing to **[Agency Name]** the *[describe items to be purchased]* and other Related Services as indicated on Schedule A - Authorized Product and Price List (attached hereto), in accordance with the terms and conditions of this Contract. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

Recitals – Every contract must provide for contractual considerations. If the contract results from an RFP or RFQ, include a recitation as to the basis for the contract, and where appropriate, included by reference in this section. Any schedules of Equipment, Software or services to be acquired together with prices/discounts should be included by reference and attached to the contract

1. Definition of Terms

[Definition of Terms not included in this list but which are pertinent to the individual contract should be added to this list.]

Definitions as used throughout this Contract shall have the meanings set forth below.

“Acceptance” shall mean a written notice from the Purchaser to the Vendor that the Equipment has passed its Acceptance Testing.

“Acceptance Date” shall mean the date upon which Purchaser Accepts the Equipment as provided in the section titled Standard of Performance and Acceptance

“Acceptance Testing” shall mean the standards to be met by the Equipment prior to Acceptance by the Purchaser, as set forth in the section titled Standard of Performance and Acceptance

“Business Days and Hours” shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Contract” shall mean this document, all schedules and exhibits, and all amendments hereto.

“Delivery Date” shall mean the date by which the Equipment ordered hereunder must be delivered *if a specific date is set forth in this Contract, you may insert that date here by adding: “which shall be (fill in specific date)”*.

“[Department/Commission/Board]” shall mean the same as “Purchaser”, the *[Agency Name]*.

“Equipment” shall mean the *[describe items to be acquired under this Contract]* and any other Equipment properly added to this Contract, all as set forth on Schedule A - Authorized Product and Price List.

“Equipment Failure” shall mean a malfunction in the Equipment, excluding external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Vendor-supplied operating software and/or firmware, residing in the Equipment, is necessary for the proper operation of the Equipment, a failure of such operating software and/or firmware which prevents the accomplishment of the Equipment's intended function(s) shall be deemed to be an Equipment failure.

“Execution Date” shall mean the date of the last signature of a party to this Contract.

“Exhibit A” shall mean the Request for *[Proposal/Quotation/Quotations and Qualifications]* *[(RFP)/(RFQ)/(RFQQ)]* for *[Describe Acquisition]* issued by the Washington State *[Agency Name]* dated *[Date]*.

“Exhibit B” shall mean the Vendor's response dated *[Date]*.

“FEIN” shall mean the Vendor's Federal Employer Identification Number.

“Installation Date” shall mean the date by which all Equipment ordered hereunder shall be in place, in good working order and ready for Acceptance Testing *[If a specific date is set forth in the Contract, you may insert that date here by adding: “The Installation Date shall be (fill in specific date).”]*

“Order Document” shall mean any official Purchaser document and attachments thereto specifying the Equipment to be purchased from the Vendor under this Contract.

“Purchaser” shall mean the state of Washington, *[Agency Name]*, any division, section, office, unit or other entity of the *[Agency Name]* or any of the officers or other officials lawfully representing the

[Agency Name], which has executed this Contract with the Vendor for specified Equipment and/or services.

“Purchaser Contract Administrator” shall mean that person designated by the [Agency Name] to administer this Contract on behalf of the [Agency Name] as further defined in the section titled Purchaser Contract Administrator.

“Purchaser Contracting Officer” shall mean the [the Agency’s Officer with signature authority] or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Contracting Officer acting within the limits of his/her authority.

“RCW” shall mean the Revised Code of Washington (Washington State Law).

“[RFP/RFO/RFOQ]” shall mean the Request for [Proposal/Quotation/Quotations and Qualifications] used as a solicitation document in this procurement, as well as all amendments and modifications thereto. [Use this definition only if the procurement was competitively bid.]

“Related Services/Services” shall mean those services provided under this Contract and related to the Equipment being acquired, that are appropriate to the scope of this Contract and includes such things as installation services, maintenance, training, etc.

“Software” shall mean the object code version of computer programs and any related documentation, excluding maintenance diagnostics. Software also means the source code version, where provided by Vendor.

“Specifications” shall mean the technical and other specifications set forth in the [RFP/RFO/RFOQ], Exhibit A, and any additional specifications set forth in Vendor’s Response, Exhibit B, collectively.

“SSN” shall mean the Vendor’s Social Security Number if used in lieu of Federal Employer Identification Number as the Vendor’s Federal Tax Identification Number.

“Standard of Performance” shall mean the criteria which must be met before Equipment can be Accepted by the Purchaser, as set forth in the section titled Standard of Performance and Acceptance. The Standard of Performance also applies to all additional, replacement or substitute Equipment and Equipment which is field modified by or with the written approval of Vendor after having been Accepted.

“Subcontractor” shall mean one not in the employment of the Vendor, who is performing all or part of those services under this Contract under a separate contract with the Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

“TIN” shall mean the Vendor’s Federal Taxpayer Identification Number which may be either FEIN or SSN.

“UBI” shall mean the Vendor’s Uniform Business Identifier issued by the Washington State Department of Revenue.

“Vendor” shall mean [Vendor’s Name], its employees and agents. “Vendor” also includes any firm, provider, organization, individual, or other entity performing services under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

“Vendor’s Account Manager” shall mean a representative of the Vendor who is assigned as the primary contact person whom the [Agency Name] Contract Administrator shall work with for the duration of this Contract unless replaced, with advance Purchaser approval, by another representative.

Definition of Terms– To establish specific definitions for terms used within the contract
This section, near the front of the contract, should contain a definition of any potentially

confusing, ambiguous, vague, unique, etc., terms or any other terms that may be appropriate and useful in the contract.

Contract Term

2. Term (required term)

[If this is a single purchase contract, use the following section only; otherwise, use Initial Term, Subsequent Terms, and Maintenance as applicable.]

All purchase transactions executed pursuant to the authority of this Contract shall be placed ~~by~~ by Date and Vendor shall have the Equipment delivered by the date specified in the Equipment Delivery section and installed by the date specified in the Vendor Installation and Set-up section.

[- OR -]

- 2.1. Initial Term. The initial term of this Contract shall be _____ (___) years, commencing upon the date of its execution by both the parties. The Execution Date of this Contract shall be the date of the last signature hereto.
- 2.2. Subsequent Terms. The term of this Contract may be extended by _____ (___) additional one (1) year terms: PROVIDED, The extensions shall be at the option of the Purchaser and shall be effected by the Purchaser giving written notice of its intent to extend this Contract to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term and Vendor accepting such extension prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

[-OR- replace Subsequent Terms with the following]

- xx. Subsequent Terms. The term of this Contract shall be automatically extended ~~for~~ _____ (___) additional one (1) year periods unless terminated by the Purchaser by giving written notice of its decision not to renew to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

[If purchase contract includes maintenance, add a section regarding the term of the maintenance contract. An example is shown below titled Maintenance.]

2.3. Maintenance

- 2.3.1. The initial term for maintenance service for Equipment purchased herein shall be _____ (___) year(s), commencing one day following expiration of Vendor's provided warranty for the Equipment, as set forth in the section titled Equipment Warranty.
- 2.3.2. The term of said maintenance service may be extended by _____ (___) additional _____ (___) year periods: PROVIDED, Each extension shall be at the option of the Purchaser and shall be effected by the Purchaser giving written notice of the extension to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term and Vendor accepting such extension prior to the expiration of the then current Contract term. Each maintenance term shall be governed by the terms and conditions established herein. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

[-OR replace one paragraph immediately above with the following]

- xx. The term of said maintenance service shall be automatically extended 1 (___)/additional [___] (___)/year periods unless terminated by the Purchaser by giving written notice of its decision not to renew to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

The contract should specify a start date and a completion date, and conditions for extensions and termination

Contracts may cross biennial and fiscal year lines, but the contract should specify that any service performed beyond the end of the fiscal year or biennium is authorized contingent upon receipt of funding. No service is to be provided until funding is authorized.

3. Survivorship

All purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Disputes, Limitation of Liability, Patent and Copyright Indemnification and Protection of Purchaser's Confidential Information shall survive the termination of this Contract.

The contract should address the survivability of certain clauses

Pricing, Invoice and Payment

Contract payment types can be broadly divided into two categories: fixed-price and cost-reimbursable. Under a fixed price or lump sum contract, the Vendor is obligated to perform within the specified contract amount or exceed it at the Vendor's expense. The Vendor has full risk for profit or loss as governed by the costs. Under a cost-reimbursable contract when the scope of service may not be as clearly defined, the Vendor agrees to apply his/her best efforts to perform within the contract amount. The Vendor is reimbursed for incurred costs in increments or upon completion.

The primary considerations for determining the type of remuneration to use are technical and cost uncertainty. Technical uncertainty is the primary determinant. Limited uncertainty would indicate the use of a fixed-price contract, while high uncertainty indicates a cost-reimbursable contract.

Fixed Price (Lump Sum) Contract

The firm fixed price contract is preferred for most state contracting. The Purchaser's expenditures can be predicted, administration is minimal, and any financial risks are those of the Vendor. A fixed price contract has a firm maximum dollar figure. The Vendor accepts full responsibility for costs over and under the fixed price (lump sum) amount. The Purchaser's project manager should determine if the fixed price is reasonable under the circumstances of the particular project. Where future costs are uncertain, two variations may be considered:

Fixed Price with Economic Price Adjustments – Subject to economic indicators or occurrences specified in the RFP, the contract provides for price adjustments that allow for upward or downward revision of price.

Government indices or other factors in the price adjustment formula should reflect conditions industry wide, and the burden of proof for a price increase rests with the Vendor. The contract must call for sufficient lead time on price increases to permit necessary adjustments by the program affected. The Vendor bears all risks, except for the identified areas of price adjustment, and retains the incentive to manage the work and costs effectively. In practice, the Vendor may find that it is possible to absorb some cost increases to the benefit of the Purchaser.

Time and Materials Contract

Under time and materials contracts, the state pays a fixed hourly rate and for the costs of certain specified materials. The nature of these contracts may discourage efficiencies on the part of the Vendor. Therefore, these contracts should have a ceiling amount which the Vendor may exceed at his/her own risk. This type of remuneration may be used if the Purchaser is unable to specify the tasks that will be performed. A time and materials contract places most of the risk on the Purchaser and none on the Vendor. Frequent contract monitoring is required to ensure that the number of labor hours is kept to a reasonable level.

Cost-Reimbursable Contract

This is a contract in which the Vendor is reimbursed for its costs rather than payment based solely on the amount and quantity of service rendered. Cost reimbursable contracts almost always include a budget with a line item for each type of cost. When entering into a cost-reimbursable contract, agencies must make a clear determination of allowable costs. This type of contract is used when Vendor compensation cannot be based on performance or deliverables. In such cases, the Purchaser makes as reasonable an estimate of cost as possible. Cost-type contracts generally have a limited application in contracting for services. Implicit in this type of contract is the complete disclosure of costs by the Vendor and Purchaser Project Manager's ability to monitor the costs.

Two variations of cost-reimbursable contracts are:

Cost Plus Fixed Fee – This is the most frequently used form of a cost reimbursement contract. In this type of transaction, the Purchaser and Vendor agree on the total estimated cost of the project and the allowable fee or profit to be earned by the Vendor. Allowable costs are agreed upon prior to contract award to prevent ambiguity. If actual costs are lower than estimated, the Vendor will earn a higher percentage fee of costs. If the costs are higher than estimated, the Vendor does not earn any fee.

Cost Plus Incentive Fee – Incentive contracting requires identifying significant, measurable factors on which to place the incentives. Cost is always a reasonable factor. Rather than a fixed fee, the contract form has a minimum fee and a maximum fee. An under-run earns a reward and an overrun is not rewarded.

Performance completion dates are also candidates. The Vendor is rewarded for timeliness, but not for untimeliness. Selecting these events and establishing an acceptable incentive formula represent major negotiating tasks.

Cost-reimbursable contracts are difficult to monitor and require increased contract administration to verify expenditures. In addition, some federally-funded cost reimbursement contracts are subject to special audit requirements under the Single Audit Act described in Office of Management and Budget Circular No. 133.

The contract should state whether the Purchaser will pay expenses incurred by the Vendor and, if so, which ones. Such expenses may include airfare (economy or coach class), lodging

and subsistence necessary during periods of required travel, expenses incurred during travel for telephone, copying and postage, and private vehicle mileage. If other types of expenses are to be allowed, they must be clearly defined. Travel expenses are generally reimbursed at the current state travel reimbursement rates.

The contract should state the maximum dollar amount allowed for expenses.

4. Pricing *(required term)*

- 4.1. The Vendor agrees to provide the Equipment and Related Services at the costs, rates, and fees set forth below and in the Authorized Product and Price List attached as Schedule A to this Contract. No other costs, rates, or fees shall be payable to the Vendor.

[Use the following two sections only if maintenance is being purchased.]

- 4.2. Maintenance and support fees - Upon expiration of the Vendor-provided warranty as set forth in the section titled Equipment Warranty and upon election by the Purchaser to receive maintenance and support services from the Vendor, the Purchaser shall pay maintenance and support fees to the Vendor calculated at percent [()]% of the Vendor's then current maintenance fee for the Equipment and/or Software: PROVIDED, That maintenance and support fee increases shall be capped at percent [()]% annually from one year to the next and may only be increased on the anniversary of the Execution Date of this Contract.

Purchaser shall pay maintenance and support charges on a monthly basis, in arrears *[Change preceding sentence if payment is one quarter in advance.]* Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

- 4.3. Training fees - *[insert cost here]*

- 4.4. Installation fees - *[insert cost here]*

- 4.5. Upgrade fees - *[insert cost here]*

- 4.6. Such costs, rates, and fees may not be increased during the term of this Contract.

[- OR - sections above can be replaced with the following one section if all fees are going to be placed in an attached Schedule]

- 4.7. The Vendor agrees to provide the Equipment, Maintenance and Related Services at the costs, rates, and fees set forth above and in Schedule A to this Contract. No other costs, rates, or fees shall be payable to the Vendor for implementation of Vendor's proposal/quotation.
- 4.8. If the Vendor reduces its list prices for any of the Equipment or Related Services during the term of this Contract, the Purchaser shall have the immediate benefit of such lower prices and rates for new purchases.
Vendor shall send notice to the Purchaser Contract Administrator with the reduced list prices within fifteen (15) Business Days of the reduction taking effect. *[- OR -]* Vendor shall send updated price lists to the Purchaser *[quarterly/semi-annually]*
- 4.9. At least *[120 calendar days or lesser number of days' notice desired by purchaser]* before the end of the then current term of this Contract, the Vendor may propose purchase price and maintenance and support (service) rate increases by written notice to the Purchaser Contract

Administrator. Price adjustments will be taken into consideration by the Purchaser Contract Administrator when determining whether to extend this Contract.

To establish conditions for price increases, reductions, escalation, and notices thereof

[Price Protection section following is only advisable when federal funds involved or in special circumstances.]

- 4.10. The Vendor agrees all the prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by the Vendor to any other governmental entity purchasing the same quantity under similar terms. If the Vendor shall, during the term of this Contract, enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, the Vendor shall be obligated to provide the same to the Purchaser for subsequent purchases.

Price Protection - To guarantee state agencies the vendors most favored customer prices

5. Advance Payment Prohibited*(required term)*

No advance payment shall be made for the Equipment and Related Services furnished by Vendor pursuant to this Contract. *[If there is maintenance, but it is not being paid in arrears as set forth in Pricing and Price Protection above, insert the following: "Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter."]*

Advance Payments Prohibited – All payments must be made after the delivery of products or services. Agencies cannot issue payment for services prior to the performance of work. Agencies must not pay for any service prior to receipt thereof, per the Washington State Constitution, Article VIII, Section 5, "Credit Not to be Loaned."

6. Taxes

The Purchaser will pay sales and use taxes imposed on the Equipment or Related Services acquired hereunder. The Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, taxes based on the Vendor's income, or personal property taxes levied or assessed on the Vendor's personal property to which the Purchaser does not hold title*[If Vendor financing is being used, negotiate personal property tax and determine whether exemption can flow down to Vendor, tax can be billed as line item, or tax must be included in bid cost.]*Purchaser, as an agency of the Washington State government, is exempt from property tax.*[If Purchaser is not a state agency, then it is responsible for payment of personal property tax for the Equipment, so delete the last line of this section.]*

Taxes – To identify tax liability and exemptions for the contract

7. Invoice and Payment*(required term)*

[If this is a simple contract for \$10,000 or less only the following paragraph need be included.]

Invoices for work performed shall be submitted, in writing to the Purchaser Contract Administrator, in a format designated by the Purchaser Contract Administrator. In addition to agreed upon charges, invoices shall include such information as is necessary for Purchaser to determine the exact nature of all expenditures and shall reference this Contract number [XXX-XXX-XXX]. Additional payment terms or invoice instructions may be agreed upon by the Purchaser and the Vendor.

[If this is a complex contract or is for more than \$10,000 use the following paragraphs.]

- 7.1. The Vendor will submit properly itemized invoices and/or vouchers to the Purchaser. Invoices shall provide and itemize, as applicable:
- a) Contract number [XXX-XXX-XXX];

- b) Description of Equipment, including quantity ordered, model and serial numbers;
 - c) Date of delivery and/or date of installation and set up;
 - d) Vendor's list price for each item;
 - e) Applicable discounts;
 - f) Monthly maintenance charges;
 - g) Net invoice price for each item;
 - h) Applicable taxes;
 - i) Shipping costs;
 - j) Other applicable charges;
 - k) Total invoice price; and
 - l) Payment terms including any available prompt payment discounts.
- 7.2. Such payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of such Equipment or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.3. Incorrect or incomplete invoices will be returned by the Purchaser to the Vendor for correction and reissue.
- 7.4. This Contract number/[XXX-XXX-XXX] must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. The Purchaser shall not honor drafts, nor Accept goods on a sight draft basis.
- 7.5. If the Purchaser fails to make timely payment, Vendor may invoice the Purchaser one percent (1%) per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Equipment or receipt of Vendor's properly prepared invoice, whichever is later.

It is helpful to include invoicing instructions in the contract. The Purchaser may require use of State Form A-19, Invoice Voucher, for submittal of requests for payment and may state how often invoices should be submitted. Invoices in whatever form submitted must contain sufficient detail and back-up documentation to determine the appropriateness of the charges.

Payment and Invoice Provisions- To establish provisions for the timing of payments and establish conditions for delinquency and penalties

8. Overpayments to Vendor

Upon notice thereof, Vendor shall promptly refund to Purchaser the full amount of any erroneous payment or overpayment to which Vendor is not entitled pursuant to this Contract.

Vendor's Responsibilities

The Vendor's Responsibilities is the single most important element in the contract and requires the most original writing. This section documents all elements of the scope and magnitude of the Equipment and Services to be provided and reflects the mutual understanding of the parties regarding what is being contracted

All work expectations, tasks, goals, deliverables, and milestones of the Equipment and Services to be provided must be clearly defined. Do not take any work for granted or plan to handle some expectations by verbal contract. If it is not included in the contract, its performance may not be required.

Any ambiguous provisions will be interpreted most strongly against the drafting party.

The Vendor's Responsibilities may incorporate the Vendor's proposal by reference, if all work elements are satisfactorily delineated.

9. Title [and Ownership of Work Product]~~(required term)~~

Upon successful completion of Acceptance Testing and receipt of the Purchaser's letter of Acceptance ~~for~~
upon delivery, if there is no Acceptance testing the Vendor shall convey to the Purchaser good title to the Equipment excluding licensed software, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Transfer of title to the Equipment does not include transfer of title to Vendor's Software. Software offered by Contractor under this Contract is offered only under a license-to-use, as defined in the sections titled Equipment and Maintenance and Documentation and Software License Term

[If a software license is included, use the following sentence.] Vendor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract.

[The following provisions are applicable only when there is a work product as well as Equipment being purchased.]

Unless otherwise provided, data which originates from this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the Purchaser. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data which is delivered under this Contract, but which does not originate therefrom, shall be transferred to the Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so: PROVIDED, That such license shall be limited to the extent which the Vendor has a right to grant such a license. The Vendor shall exert all reasonable effort to advise the Purchaser, at the time of delivery of data furnished under this Contract, of all known or potential infringements of privacy or other intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. The Purchaser shall receive prompt written notice of each notice or claim of copyright infringement received by the Vendor with respect to any data delivered under this Contract. The Purchaser shall have the right to modify or remove any restrictive markings placed upon the data by the Vendor.

Vendor shall not use or in any manner disseminate such work product or program to any third party without the prior written permission of the Purchaser. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or duplicate any programs or work products or any portion thereof, in any form, or make any disclosure with reference thereto to any third party.

Title — To assure that the Vendor shall convey clear title of purchased Equipment upon completion of Acceptance testing and that Vendor is the owner of Software and/or has unrestricted right to license it to Purchaser.

10. Equipment Delivery

10.1. The Vendor shall deliver the Equipment ordered pursuant to this Contract on or before ~~the~~ *specify delivery date*. For any exception to this Delivery Date, the Vendor must notify the Purchaser and obtain prior approval in writing. Time is of the essence with respect to delivery and the

Vendor may be subject to liquidated damages and/or termination of this Contract and/or other damages available under law for failure to deliver on time.

- 10.2. All Equipment deliveries made pursuant to this Contract must be complete. Unless the Vendor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be Accepted. All packages must be accompanied by a packing slip which identifies all items included with the shipment and the Purchaser's Purchase Order number. The Vendor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.
- 10.3. *[Provide any other delivery instructions, e.g. truck not more than 28 feet in length, or no deliveries after 3:00 p.m., or must prearrange deliveries with specified person, etc.]*

Installation and Delivery Dates– To establish the terms, dates, and conditions for delivery and installation

11. Risk of Loss and Shipping

The Vendor shall ship all Equipment purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Equipment and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Equipment ordered hereunder which occurs prior to ~~delivery or Acceptance, whichever is applicable~~, except loss or damage attributable to the Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder. After ~~delivery or Acceptance, whichever is applicable~~ the risk of loss or damage shall be borne by the Purchaser, except loss or damage attributable to the Vendor's fault or negligence.

Risk of Loss– To relieve the Vendor for risks of loss or damage after installation of the Equipment and/or Software.

Transportation– To establish responsibility for cost of transportation, transit insurance, risk of loss, and title during shipment to the installation site

12. Vendor Installation and Set-up

[If the Vendor is going to install the Equipment - the following section can be used:]

- 12.1. The Vendor shall install the Equipment, ready for Acceptance Testing, on or before the Installation Date(s) *[specified in the Purchase Order or Field Order or name the date]* Failure to meet the Installation Date(s) may subject the Vendor to liquidated damages and/or termination of this Contract and other damages available under law, unless such failure is caused by acts or omissions of the Purchaser.
- 12.2. After installing the Equipment, the Vendor shall provide the Purchaser with documentation of a successful system audit, performed at the Purchaser's installation site using Vendor's diagnostic routines, as approved by the Purchaser, which demonstrates that the Equipment meets or exceeds the technical and other Equipment specifications set forth in the ~~RFP/RFQ/RFQQ~~, Exhibit A, and any additional specifications set forth in Vendor's Response, Exhibit B, which collectively shall be called the "Specifications." Vendor shall certify to the Purchaser in writing that the Equipment is ready for Acceptance Testing. If after reviewing such documentation the Purchaser agrees that the Equipment is ready for Acceptance Testing, the Purchaser shall begin Acceptance Testing, as set forth in section titled Standard of Performance and Acceptance
- 12.3. The Purchaser shall prepare the environment to house the Equipment based upon written requirements provided by Vendor in its Response, Exhibit B hereto, as modified in writing and

agreed to by the parties. Vendor's specialists shall be available to provide required consultation related to environment preparation at no extra cost to the Purchaser apart from the costs presented in Vendor's Response. Any requirements for the environment not disclosed in Vendor's Response will be completed by Vendor at no additional cost to the Purchaser.

[- OR -]

xx. Purchaser Installation and Set-up

[If the Purchaser is going to install the Equipment - the following section can be used:]

All installation of the Equipment purchased pursuant to this Contract for use by Purchaser will be by, and at the sole expense, of Purchaser.

13. Equipment Specifications/Configurations

[This section is to be included only when applicable to the type of purchase being made.]

- 13.1. Each item of Equipment, component, or feature thereof delivered hereunder will conform to the detailed specification of said item, as set forth in the Vendor's proposal, in all respects including, but not limited to, physical characteristics, operating characteristics, space requirements, power requirements, maintenance or warranty characteristics, modularity, compatibility, and the like, as may be modified in writing and agreed to by the parties.
- 13.2. The Equipment, components, or features purchased hereunder, for the purpose of delivery and performance under this Contract, shall be grouped together in one or more Equipment, firmware, and/or software configurations as set forth in the Vendor's proposal.
 - 13.2.1. Any such configuration shall be deemed incomplete and undeliverable if any item of Equipment, component, or feature thereof within that configuration has not been delivered, or if delivered, not installed or operational in accordance with the Equipment Delivery and Vendor Installation and Set-up sections of this Contract.
 - 13.2.2. Any such configuration shall be deemed not Accepted if any item of Equipment, component, or feature thereof within that configuration is deemed not acceptable in accordance with the Standard of Performance and Acceptance section of this Contract.
- 13.3. The Purchaser shall have the right to connect the Equipment purchased hereunder to any Equipment manufactured or supplied by others including other computers, peripheral Equipment, terminal devices, communications Equipment, software and the like which interface with the Equipment purchased hereunder.
 - 13.3.1. The Purchaser shall notify the Vendor at least five (5) Business Days prior to any such connection. If the Vendor shall deem it necessary, the Vendor shall make or supervise the interconnection, at the Vendor's then current rates in effect. Any such connection shall not void any herein-stated maintenance service or Equipment warranties.
 - 13.3.2. The Vendor shall supply any required interface devices, proprietary to the Vendor, as described in published Vendor manuals at the then current price. Said price shall be subject to any price protection sections in this Contract.
- 13.4. If requested by the Purchaser, the Vendor agrees to identify, on all items of Equipment, components, or features thereof supplied under this Contract, all appropriate test points for connecting commercially available Equipment monitors designed to measure system capacity, performance, or activity.
- 13.5. Vendor shall not be responsible for equipment failures caused solely by such interconnections except as provided in the section titled Vendor Commitments, Warranties, and Representations

Interface of Equipment -- To provide assurance that Vendor provided products will interface with specified Equipment.

Equipment Configurations -- Equipment conformance to specifications. Includes specific listings of Equipment and interface and connectivity requirements, which should be included in acquisition solicitation documents.

Specifications-- To provide for including technical Equipment specifications by reference and attached to the contract

14. Standard of Performance and Acceptance

[This provision need only be used when Equipment to be purchased is required to perform a critical business function of the Purchaser or when leading edge technology is being procured. For standard products whose performance (other than equipment failures covered elsewhere) has already been proven, the cost increase of requiring such a provision may not be worth the benefits.]

- 14.1. This section establishes a Standard of Performance which must be met before any Equipment is Accepted by the Purchaser. It is also applicable to any additional, replacement or substitute Equipment and Equipment which is field modified by or with the written approval of Vendor after its Acceptance.
- 14.2. The Standard of Performance is defined as ~~a~~*seventy-five percent (75%) or one hundred percent (100%), or whatever percent is appropriate* effectiveness level of operation in conformance with the Specifications for the initial period of Acceptance Testing, defined as a period ~~of thirty (30)~~ *or however many days is appropriate* consecutive *[calendar days/Business Days]* starting from the day after the Equipment has been installed and certified by the Vendor as ready for Acceptance Testing. The Purchaser will review all pertinent data and shall maintain appropriate daily records to ascertain whether the Standard of Performance has been met.
- 14.3. The effectiveness level for Equipment is a percentage figure determined by dividing the operational use time of the Equipment by the sum of that time plus equipment failure downtime, all of which shall be measured in hours and whole minutes. Operational use time for Equipment is defined as the accumulated time during which the Equipment is in actual use, which shall be at least *[one hundred (100) hours or whatever time period is appropriate]* Equipment failure downtime is that period of time when work cannot be processed or completed because of malfunctioning Equipment or Vendor Supplied Software. Vendor Supplied Software shall mean that software which is sold with and is integral to the Equipment's operation. Downtime for each incident shall start from the time the Purchaser makes a bona fide attempt to contact the Vendor's designated representative at the prearranged contact point until the Equipment is returned to the Purchaser fully operational in conformance with the Specifications. During periods of Equipment downtime, the Purchaser may use operable Equipment when such action does not interfere with maintenance of the inoperable Equipment.
- 14.4. In the event the Equipment does not meet the Standard of Performance during the initial period of Acceptance Testing, the Purchaser may, at its discretion, continue on a day-to-day basis until the Standard of Performance is met. If after *[ninety (90) calendar days, or some other appropriate time period]* the Equipment still has not met the Standard of Performance the Purchaser may, at its option: (1) declare the Vendor to be in breach and terminate this Contract; or, (2) demand replacement Equipment from the Vendor at no additional cost to the Purchaser; or, (3) continue the Acceptance Testing for an additional *[thirty (30) calendar days or as long as appropriate]*. The Vendor shall pay all costs related to the preparation and shipping for Equipment returned pursuant to this section. The Purchaser's option to declare the Vendor in breach and terminate this Contract shall remain in effect until exercised or until such time as Acceptance Testing is successfully completed.

- 14.5. Equipment shall not be Accepted and no charges shall be paid until this Standard of Performance is met. The date of Acceptance shall be the first Purchaser Business Day following the successful Acceptance Testing period and shall be formalized in a letter of Acceptance from the Purchaser to the Vendor.
- 14.6. Monthly Performance Monitoring- Throughout the initial and subsequent maintenance terms of this Contract, the Purchaser shall monitor the effectiveness level of the herein purchased Equipment, on a monthly basis, to ensure the Equipment operates at the effectiveness level as established in this Standard of Performance and Acceptance section. Failure of Vendor to provide the Equipment effectiveness level established in this section throughout the initial and subsequent maintenance terms of this Contract will require Vendor to take corrective action, as directed by the Purchaser.
- 14.7. Maintenance Charges - Maintenance charges shall apply following expiration of Vendor's provided warranty.

Warranties – To establish specific Vendor warranties for performance of Equipment and Software and define remedies in the event of failure of warranted products

Standard of Performance and Acceptance- To establish provisions for a standard of performance which must be met before any Equipment or Software is Accepted by the State.

15. Equipment Warranty

- 15.1. The Vendor warrants that the Equipment, when installed, shall be in good operating condition and shall conform to the Specifications and other materials provided to the Purchaser as set forth in the section titled Vendor Commitments, Representations, and Warranties at the time of Acceptance by the Purchaser and for a period of one (1) year *or other time period as specified in Vendor's response* commencing upon the first day after Acceptance. Vendor further warrants that the Equipment conforms to all mandatory requirements set forth in Exhibit A and all representations contained in the proposal Vendor submitted in response thereto.
- 15.2. Within *[five (5) Business Days or other time frames as applicable]* of notification from the Purchaser, Vendor shall adjust, repair or replace all Equipment that is defective or not performing in conformance with the Specifications. The Vendor shall assume all costs for replacing parts or units and their installation, including transportation and delivery fees, if any.
- 15.3. The Vendor shall also provide a toll-free telephone service "hotline" to allow the Purchaser to report Equipment failures and problems to be remedied by the Vendor. Any defective Equipment must be repaired or replaced for Purchaser so that it conforms to the Specifications.
- 15.4. Vendor agrees that all warranty service it provides hereunder shall be performed by manufacturer trained, certified, and authorized technicians. Vendor further agrees to act as the sole point of contact for warranty service. Vendor warrants that it has and will obtain and pass through to the Purchaser any and all warranties obtained or available from the original Equipment manufacturer, including any replacement, upgraded, or additional Equipment warranties.
- 15.5. The Purchaser agrees that the Vendor will not be liable for any damages caused by the Purchaser's actions or failure of the Purchaser to fulfill any of its responsibilities for site installation.
- 15.6. THE WARRANTIES IN THIS CONTRACT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

Software, Upgrade, and Enhancement– To establish conditions for upgrade, downgrade, trade-ins, etc., for exchange of Software or Equipment { * Some Vendors will provide conditions by which the Purchaser may exchange the unit of Equipment or Software being acquired in conjunction with a future upgrade or new release. If Purchaser determines that such a clause may be important it is usually the responsibility of the Vendor to provide such terms and conditions} Specific requirements should be included in the solicitation document and be reflected in this clause (Software maintenance, upgrade and enhancement can outline several areas of Vendor responsibilities. These may require the Vendor:

To supply at no added cost updated versions of the Equipment to operate under new releases of the manufacturer's operating system.

To supply updated versions of the Equipment which encompass improvements, extensions, or other changes which Vendor, at its discretion, deems to be logical improvements or extensions of the original products supplied to the Purchaser.

To supply interface modules which are developed by the Vendor for interfacing the Software to other Software products. Each of these items may be negotiated independently, depending upon the circumstances, with regard to each party's responsibilities, costs, etc

16. Equipment Maintenance and Support Services

[This section should be specifically negotiated with the Vendor. Some Vendors provide standard maintenance programs that will meet a Purchaser's needs while others will not. Late response and Equipment downtime credits and penalties should be consistent with the business need of the Purchaser and the specific Equipment. Consider, for example whether to bundle the operating system into the 'Equipment' for purposes of defining an equipment failure. In addition, also determine whether you desire to have 'repair' level pricing loaded into the product price, or whether, particularly for standard off-the-shelf software products, inexpensive levels of support are acceptable.]

Vendor agrees that, for purchased Equipment, Vendor will at the sole option of the Purchaser, and consistent with the Term section, maintain the Equipment to original performance specifications, or current standards with Purchaser's prior written permission, and in accordance with the following maintenance terms and conditions after the warranty period of any Equipment purchased pursuant to this Contract, provided that said Equipment has been continuously maintained by the Vendor, or the Vendor's authorized Subcontractor, since its Acceptance.

Compliance with Standards– To cause Vendor to comply with specified Equipment and Software standards (Purchaser's, American National Standards Institute (ANSI), International Standards Organization (ISO), or other

16.1. The Vendor shall keep the Equipment in good operating condition or restore it to good working order in accordance with Vendor's official published specifications. Vendor shall provide contracted maintenance support [_____] (__) /hours per day, [_____] (__) /days per week, every day of the year [excluding/including] all Purchaser and Vendor recognized holidays or whatever terms have been agreed upon.]

16.1.1. The Purchaser shall provide the Vendor access to the Equipment to perform maintenance service.

16.1.2. The Vendor shall specify in writing, for each machine, the number of hours it requires per month for preventive maintenance and the frequency and duration of such preventive maintenance. From this Vendor supplied information the Purchaser shall develop and provide to the Vendor in writing the schedule within which the Vendor shall provide preventive maintenance. This schedule may be modified by mutual Contract. In addition, preventive maintenance may be performed at a time convenient to the Purchaser within or contiguous with remedial maintenance.

- 16.1.3. Remedial maintenance shall be performed within _____ (____) [*hours/days*] after notification that Equipment is malfunctioning or inoperative. The Vendor shall provide the Purchaser with a designated point of contact and shall make arrangements to enable a maintenance representative to receive such notification.
- 16.1.4. The Vendor shall furnish a maintenance activity report to the Purchaser upon completion of each maintenance call. The report shall include, as a minimum, the following:
- a) Date and time notified;
 - b) Date and time of arrival;
 - c) Type and serial number(s) of machine(s);
 - d) Time spent for repair;
 - e) Description of malfunction;
 - f) List of parts replaced; and
 - g) Additional charges, if applicable.
- 16.1.5. There shall be no additional maintenance charges for:
- a) Replacement parts;
 - b) Preventive maintenance, regardless of when performed;
 - c) Remedial maintenance which was begun during the principal period of maintenance or extension thereof or when the Vendor was notified during the principal period of maintenance or extension thereof of the need for remedial maintenance;
 - d) Remedial maintenance required within a forty-eight (48) hour period due to recurrence of the same malfunction;
 - e) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, tools or other required material; nor
 - f) Remedial maintenance required when the scheduled preventive maintenance preceding the malfunction has not been performed.
- 16.1.6. Malfunctioning Equipment must be repaired or a replacement spare installed by the Vendor's qualified field engineer no later than ~~the close of business on the Business Day or other appropriate option~~ following notification of Equipment malfunction. Failure of the Vendor to comply with this requirement shall be a Failure to Perform.

[This following section is to be included only when on-site parts storage is included in purchase]

16.2. On-Site Parts Storage

- 16.2.1. For the term of maintenance service contracted for herein, the Vendor shall provide a complement of spare parts for the machines and Equipment types listed in Vendor's proposal and installed at the Purchaser's location. A spare for any part that can affect subsystem operation, data availability or performance shall be stocked at the Purchaser's facility. The Purchaser will provide locked and accessible storage for the on-site parts depot. These facilities shall be within a reasonable distance of the Equipment to be serviced and shall be provided at no charge to the Vendor. The Vendor shall be able to supply other spare parts which are stored off-site within ~~one (1) hour or other appropriate option~~ of notification of a need therefor.
- 16.2.2. After the expiration of this Contract, Vendor, when requested by the Purchaser, shall furnish all data necessary to enable the Purchaser to purchase replacement parts or have them manufactured elsewhere.

16.3. Guaranteed *[Two Hour or other appropriate time]* Response Time *[This requirement should be in the procurement documents in order to have this section in the contract.]*

16.3.1. For the term of maintenance service contracted for herein, the Vendor shall provide the Purchaser with a guaranteed *[two (2) hours]* maintenance response time for the Equipment purchased hereunder. Within *[two (2) hours]* after notification by the Purchaser, to a prearranged contact point for reporting such problems, that the Purchaser is experiencing Equipment or software problem(s), Vendor's qualified field engineer shall arrive at the Purchaser's location to correct such problem. This guaranteed *[two (2) hours]* response service shall be available to the Purchaser twenty-four (24) hours per day, seven (7) days per week, every day of the year including all Purchaser and Vendor recognized holiday *[or whatever terms have been agreed upon.]*

16.3.2. Except for causes beyond the control of the Vendor, if Vendor's maintenance personnel fail to arrive at the Purchaser's installation site within *[two (2) hours]*, the Vendor shall be assessed liquidated damages, as set forth in the section of this Contract titled Liquidated Damages - Specific for each "late" hour or part thereof (prorated in whole minutes) beginning with the time of notification and ending with the time of arrival.

Vendor Correction of Equipment Malfunction – To establish that the Vendor will provide correction to Vendor supplied Equipment.

16.4. Maintenance Credits For Equipment Malfunction

16.4.1. The Vendor shall grant a credit to the Purchaser for any Equipment being maintained by Vendor which fails to perform at an effectiveness level of *[seventy-five percent (75%) or different amount specified in the section titled Standard of Performance and Acceptance]* during any month. The effectiveness level for a machine is computed by dividing the operational use time by the sum of that time plus machine failure downtime.

16.4.2. Downtime shall be defined and computed in the same manner as provided for in the Standard of Performance and Acceptance sections of this Contract. The credit granted by Vendor shall be *[fifty percent (50%) or other reasonable amount]* of the monthly maintenance fee for each percentage point a machine falls below its effectiveness level. For example if the credit is fifty percent (50%) and the actual effectiveness level for a machine is ninety-six percent (96%), the maintenance credit would be one hundred percent (100%) of the monthly maintenance fee for that month.

16.4.3. If for two consecutive months the Equipment fails to operate at an effectiveness level of *[seventy-five percent (75%) or whatever level was established in Standard of Performance and Acceptance]* then the Purchaser will require Vendor to take corrective action to remedy the non-performance in accordance with the Equipment Warranty sections of this Contract.

16.5. Maintenance Outside Covered Period For Purchased Machines

Should the Purchaser require maintenance service outside the contracted maintenance terms established herein, such services shall be performed at the Vendor's applicable hourly rates and terms then in effect. Only one maintenance person shall respond to a request for maintenance unless it is mutually agreed that more than one person is required.

[This section is to be included only when applicable to the type of purchase being made]

16.6. Local Support

Vendor field engineers and maintenance technicians shall be based within the Olympia area. *[and/or]* At least one of the Vendor's field engineering staff shall reside within Thurston County.

[and/or] The Vendor shall maintain an office either in the Olympia area or at the Purchaser's site.

- 16.7. If the interconnectivity requirements provided in the section title Equipment Specifications/Configurations cause an increase in the support price for maintenance, such increase shall be negotiated between the parties.

Maintenance of Equipment -- To establish the terms, conditions, and provisions for maintenance of the Equipment.

17. Equipment and Maintenance Documentation

[These requirements must first be set forth in the RFx; business needs of the Purchaser will determine whether the manuals must be provided at no additional cost or at a specified cost.]

- 17.1. Vendor agrees to provide comprehensive technical and user guides for Equipment purchased by the Purchaser, at no additional cost, if this complies with Vendor's standard policies, or at Vendor's then current prices less applied discounts established under this Contract.
- 17.2. Vendor agrees to provide maintenance documents and service manuals for Equipment purchased by the Purchaser, at no additional cost, if this complies with Vendor's standard policies, or at Vendor's then current prices less applied discounts established under this Contract. *[If Purchaser needs service documents to provide its own support, include the following sentence - otherwise delete.]* Vendor must provide one copy of logic and schematic drawings of the Equipment to the Purchaser for each item of Equipment ordered, and make additional copies available for sale to the Purchaser at Vendor's then current prices less applied discounts established under this Contract. *[If the RFx requires these be provided at no additional cost, change this language.]* Vendor also agrees to forward all updates and revisions to maintenance documents, drawings and service manuals to the Purchaser for each item of Equipment ordered, at no additional cost, if this complies with Vendor's standard policies, or with Purchaser's permission, at Vendor's then current prices less applied discounts established under this Contract.
- 17.3. Vendor agrees that equipment and maintenance documentation, as with other materials provided under this contract, are subject to the public disclosure laws stated in the section title Vendor's Proprietary Information

Maintenance Documentation -- To assure that the Vendor shall provide appropriate documentation for maintenance of purchased Equipment upon request.

Equipment Documentation-- To establish that the Vendor will provide appropriate Equipment documentation

18. Spare Parts for Equipment

[This section is to be included as an option depending on the type of product being purchased, its replacement cost, and its business-driven function]

Vendor shall *[furnish or make available - depending upon whether Purchaser wants cost of parts needed or not, built into bid cost]* original Equipment manufacturer replacement parts, or the Purchaser approved equivalent, for a minimum of *five (5) years or other reasonable time* from the date of the initial delivery to the Purchaser. Vendor further agrees to offer a reasonably priced parts purchase and exchange program to the Purchaser.

19. Engineering Changes

Vendor warrants that installation of any engineering changes as Vendor may from time to time require or recommend shall not cause the performance of the Equipment modified to be materially degraded below the Specifications at the time of installation of the Equipment. Any such changes will be installed at a mutually agreed upon time. Engineering changes will not decrease or cancel any Vendor commitment, warranty or representation.

20. Installation (Site) Security

While on the Purchaser's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations communicated to Vendor.

Installation (Site) Security– To assure Vendor conformance to State premise security regulations

21. Use of Purchaser's Property and Facilities

- 21.1. Any property of the Purchaser furnished to the Vendor shall be used only for the performance of this Contract.
- 21.2. The Vendor shall be responsible for any loss or damage to property of the Purchaser which results from willful misconduct or negligence on the part of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to the Purchaser in like condition to that in which it was furnished to the Vendor. Upon the happening of loss, or destruction of, or damage to, any Purchaser property, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 21.3. The Vendor shall surrender to the Purchaser all property belonging to the Purchaser upon completion, termination, or cancellation of this Contract. All reference to the Vendor under this section shall include any of its employees, agents, or Subcontractors.

22. Vendor Commitments, Warranties and Representations

- 22.1. Any written commitment by the Vendor within the scope of this Contract shall be binding upon the Vendor. Failure of the Vendor to fulfill such a commitment may constitute breach and shall render the Vendor liable for liquidated or other damages due the Purchaser under the terms of this Contract.
- 22.2. For purposes of this Contract, a commitment by the Vendor, which must be in writing, includes:
 - 22.2.1. Prices, discounts, and options committed to remain in force over a specified period of time;
 - 22.2.2. Any warranty or representation made by the Vendor in a proposal as to Equipment or software performance or any other physical, design or functional characteristics of a machine, software package, system, training, services or other products within the scope of this Contract;
 - 22.2.3. Any warranty or representation made by the Vendor concerning the characteristics or items above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal;

- 22.2.4. Any modification of or affirmation or representation as to the above which is made by Vendor in writing during the course of negotiation whether or not incorporated into a formal amendment to the proposal in question; and
- 22.2.5. Any representation by the Vendor in a proposal, supporting documents or negotiations subsequent thereto as to training to be provided, services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Contract.

Vendor Commitments, Warranties and Representations To assure that written commitments by the Vendor within the scope of this contract shall be binding upon the Vendor. It is recommended that specific listing of incorporated documents be included, as well.

23. Year 2000 Compliance Warranty*(required term)*

Vendor warrants fault free performance in the processing of date and date related data including, but not limited to calculating, comparing, and sequencing by all Equipment and Software provided pursuant to this Contract, individually and in combination, when used in accordance with the product documentation provided by the Vendor. Fault free performance shall include the manipulation of this data when dates are in the 20th or 21st centuries and shall be transparent to the user. Failure to comply with these Year 2000 requirements shall entitle Purchaser to a refund of *(three (3) times the total purchase cost as liquidated damages) OR (the initial license fee, prorated over the useful life of the Equipment, defined by the parties as _____ (__) years)*. Vendor has no liability for any failure to comply with this provision that is caused solely by failure of an interconnected third-party product to be Year 2000 compliant.

Hardware, firmware, and software must be Year 2000 Compliant by different dates depending upon the specific application involved. If the goods being procured under the contract involve calculations of future dates (e.g., give entitlement to client for five (5) years from date) it is necessary that all products involved in processing be Year 2000 compliant immediately. However, if there are no date calculations involved, the agency may wish to include a provision above which states that the products must be compliant by a specified date in the future.

24. Physical Media Warranty

- 24.1. Vendor warrants to Purchaser that each licensed copy of the licensed Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty"). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar days after the date of Acceptance of the Software copy by the Purchaser.
- 24.2. The Physical Media Warranty does not apply to defects arising from acts of non-Vendor employees, agents or Subcontractors after the media has left Vendor's control, theft, vandalism, fire, water, acts of God or other perils beyond the control of Vendor.
- 24.3. Purchaser shall be entitled to replacement by Vendor, at Vendor's expense including shipping and handling costs, of any Software copy provided by Vendor that does not comply with this warranty.

25. No Surreptitious Code Warranty

- 25.1. Vendor warrants to Purchaser that no copy of the licensed Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."
- 25.2. As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an Owner of the computer program (or other person acting by authority of the Owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.
- 25.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or Equipment components designed to permit unauthorized access: to disable, erase, or otherwise harm software, Equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
- 25.4. Vendor will defend Purchaser against any Claim, and Indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

26. Compliance with Standards

[Use only if applicable schedule is developed.]

Vendor represents that all Equipment, software, and elements thereof, including but not limited to, documentation, and source code, shall meet and be maintained by Vendor to conform ~~to the standards set forth on Schedule ____~~ - OR - (applicable industry standards.)]

27. Training

[It is the responsibility of the Purchaser to ensure that any training offered or promised is included in the contract. A sample training section is provided below.]

- 27.1. Service Training. Prior to installation, the Vendor agrees to provide manufacturer's service training. Said training shall consist of manufacturer's standard program designed for authorized service centers and/or pre-qualified staff. A fee may be charged for training, not to exceed the amount the manufacturer normally charges authorized service centers for like training.
 - 27.1.1. The starting dates of the training will be as agreed by the parties, but in no case later than *[Month Day, Year]*.
 - 27.1.2. The training fee, whether separately stated under the pricing provisions of this Contract or included in the cost of the Equipment, shall cover all costs of training. The Purchaser shall not be responsible for any additional manufacturer's costs for training required pursuant to this section.
 - 27.1.3. The Purchaser shall have the right, so long as the Equipment purchased hereunder is in use by the Purchaser, to give instruction to the Purchaser's personnel in all courses described above and all revisions thereto without charge, using materials supplied by the Vendor. Such use by the Purchaser of Vendor's materials shall include the right to reproduce the same solely for the permitted use, which use and reproduction shall not be deemed to violate or infringe upon any patent, copyright, or other proprietary right of the Vendor.

- 27.2. Use Training. At the time of installation, the Vendor agrees to provide initial training and a six- (6-) month follow up training session, both at the installation site, for a minimum of _____ (____) of the Purchaser's staff. Such training shall be sufficiently thorough to instruct, and certify, if required, such staff in the use of the Equipment. This will include, as a minimum, orientation and familiarization training on the Equipment. Initial training shall be completed in time for the staff to operate the Equipment in the required fashion with minimum Vendor aid ~~immediately~~ *after installation and testing of Equipment OR by the installation date]*
- 27.2.1. The starting dates of the training will be as agreed by the parties , but in no case later than *[Month Day, Year]*.
- 27.2.2. The training fee, whether separately stated under the pricing sections of this Contract or included in the cost of the Equipment, shall cover all costs of training. Purchaser shall not be responsible for any additional Vendor costs for training required pursuant to this section.
- 27.2.3. The Purchaser shall have the right, so long as the Equipment purchased hereunder is in use by the Purchaser, to give instruction to the Purchaser's personnel in all courses described above and all revisions thereto without charge, using materials supplied by the Vendor. Such use by the Purchaser of Vendor's materials shall include the right to reproduce the same solely for the permitted use, which use and reproduction shall not be deemed to violate or infringe upon any patent, copyright, or other proprietary right of the Vendor.

Training – To establish any provisions and Vendor responsibilities for training on Equipment or Software.

28. Minority and Women's Business Enterprise (MWBE) Participation

[The following MWBE section is applicable only when MBE or WBE credit was given to Vendor's Response during evaluation of the competitive bid.]

Failure of the Vendor to comply with the established MWBE requirements as set forth in Vendor's Response (Exhibit B) and MWBE Certification (Schedule B) is a material breach of this Contract and may subject the Vendor to penalties and other remedies under Washington State Law.

Compliance with Minority- and Women-Owned Business Requirements – If minority- and/or women-owned business goals are required on the contract, a clause must be included stating that the Vendor will comply with Purchaser requirements to utilize minority- and women-owned businesses in contracting, subcontracting, or joint-venturing. The contract also identifies the name(s) of the firm(s), the type of work that will be performed by minority- and/or women-owned businesses, and its dollar value.

Failure on the part of the Vendor to meet MWBE specifications is a material breach of contract. In accordance with WAC 326-30-080, substitution of a selected MBE or WBE prime or Subcontractor is allowed only when the firm is decertified or indicates it is unable or unwilling to perform the work. The contracting Purchaser approves substitutions and may require the Vendor to substitute another certified MWBE to meet the contract specification.

29. Protection of Purchaser's Confidential Information

[If Purchaser has a unique category of confidential information, e.g., criminal records, health histories, etc., include those in the list below.]

- 29.1. Vendor acknowledges that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance, may consist of confidential data, the disclosure of which to, or use by, third parties could be damaging. Therefore, access to information concerning individual recipients of the State's services or individual clients, among other items, shall not be granted except as authorized by law or agency rule. Vendor agrees to hold all such information in strictest confidence, not to make use thereof for other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information, and not to release or disclose it to any other party. Vendor agrees to release such information or material only to Subcontractors who have signed a written Contract expressly prohibiting disclosure. Vendor further agrees to either destroy or return all such information at the end of the term of this Contract.
- 29.2. This section does not impose any obligation on the Vendor if the information is: (1) publicly known at the time of disclosure; (2) already known to the receiving party at the time it is furnished to the Vendor; (3) furnished by the Purchaser to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

Safeguarding of Information – The use or disclosure by any party of any information concerning the Purchaser for any purpose not directly connected with the service provided under the contract is prohibited.

Confidentiality – Vendor is required to maintain all information as confidential with regard to study findings and recommendations, the Purchaser's business and financial affairs, and any other proprietary information of the Purchaser.

30. Subpoena

In the event that a subpoena or other legal process commenced by a third party, in any way concerning the Equipment or Related Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the such other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

Contract Termination

31. Termination for Default(*required term*)

- 31.1. If either the Purchaser or the Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party.
- 31.2. In the event of termination of this Contract by Purchaser, the Purchaser shall have the right to procure the Equipment, Software or Services that are the subject of this Contract on the open market and the Vendor shall be liable for all damages, including, but not limited to: (1) the cost difference between the original Contract price for the Equipment, Software or Services and the replacement costs of such Equipment, Software or Services acquired from another Vendor; (2) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time

costs; and, (3) any other costs to the Purchaser resulting from the Vendor's breach. The Purchaser shall have the right to deduct from any monies due to the Vendor, or that thereafter become due, an amount for damages that the Vendor will owe the Purchaser for the Vendor's default.

31.3. If it is determined the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

31.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

Termination for Default – The contracting Purchaser will reserve the right to judge the competency of the Vendor at any stage of the contract. This term allows termination of the contract due to documented deficiencies in the Vendor's performance.

32. Termination for Convenience~~(required term)~~

32.1. When it is in the best interest of the Purchaser, the Purchaser Contracting Officer may terminate this Contract, in whole or in part, by~~[fourteen (14) calendar days or other appropriate length of time]~~ written notice to the Vendor. Invocation of the~~Termination for Withdrawal of Authority~~ or ~~Termination for Non-Allocation of Funds~~ sections shall be deemed a Termination for Convenience but will not require such~~[fourteen (14) calendar days or other appropriate length of time]~~ notice.

32.2. If this Contract is so terminated, the Purchaser is liable only for payments required by the terms of this Contract for Equipment and Related Services received and Accepted by the Purchaser prior to the effective date of termination.

Termination for Convenience – This term allows the contract to be terminated when it is in the best interest of the Purchaser.

33. Termination for Withdrawal of Authority

In the event that the authority of the Purchaser to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the Purchaser may terminate this Contract under the~~Termination for Convenience~~ section. This section shall not be construed so as to permit the Purchaser to terminate this Contract in order to acquire similar Equipment from a third party.

34. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Contract in any future period, the Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period. The Purchaser agrees to notify the Vendor of such non-allocation at the earliest possible time. No penalty shall accrue to the Purchaser in the event this section shall be exercised. This section shall not be construed so as to permit the Purchaser to terminate this Contract in order to acquire similar Equipment or services from a third party.

Funding Withdrawn – In the event funding is withdrawn, reduced, or limited after the commencement of the contract but prior to completion, the Purchaser may terminate the contract under the "Termination for Convenience" clause without the required notice. If no periodic future payments are required under the contract, this clause may be omitted

35. Termination for Conflict of Interest

35.1. The Purchaser may terminate this Contract by written notice to the Vendor if it is found, after due notice and examination, that there is a violation by any of the parties hereto of:

35.1.1. Ethics in Public Service, chapter 42.52 RCW; or

35.1.2. Any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

35.2. In the event this Contract is terminated as provided above pursuant to a violation by the Vendor, the Purchaser shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a breach of this Contract by the Vendor.

Conflict of Interest – The Purchaser may, by written notice, terminate the right of the Vendor to proceed if the Purchaser finds that any gratuity, bribe, extra payment in the form of entertainment, gifts or otherwise has been offered or given by the Vendor with the intent of securing the contract or receiving favorable treatment with regard to any aspect of the contract.

36. Termination Procedure

36.1. Upon termination of this Contract, the Purchaser, in addition to any other rights provided in this Contract, may require the Vendor to deliver to the Purchaser any property or Equipment specifically produced or acquired for the performance of such part of this Contract as has been terminated. The sections for the Treatment of Assets shall apply in such property transfer.

36.2. Unless otherwise provided herein, the Purchaser shall pay to the Vendor the agreed-upon price, if separately stated, for the Equipment or services received and Accepted by the Purchaser: PROVIDED THAT, In no event shall the Purchaser pay to the Vendor an amount greater than the Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Contract. Purchaser may withhold from any amounts due the Vendor for such completed work or Services such sum as the Purchaser Contract Administrator determines to be necessary to protect the Purchaser from potential loss or liability.

36.3. After receipt of a notice of termination, and except as otherwise directed by the Purchaser, the Vendor shall: *(Delete steps below which are inapplicable to your contractual situation)*

36.3.1. Stop work under this Contract on the date, and to the extent specified, in the notice;

36.3.2. If termination is to the Equipment purchase sections of this Contract, then Purchaser shall place no further orders and Vendor shall accept no further orders for additional Equipment;

36.3.3. If termination is to the Maintenance and Support sections, Vendor shall complete, all maintenance and support requests made prior to the date of notice of termination, notwithstanding the effective date of termination;

36.3.4. As soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Purchaser to the extent required, which approval or ratification shall be final for the purpose of this section;

- 36.3.5. Complete performance of such part of this Contract as shall not have been terminated by the Purchaser;
- 36.3.6. Take such action as may be necessary, or as the Purchaser may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Vendor and in which the Purchaser has or may acquire an interest;
- 36.3.7. Transfer title, excluding licensed Software, to Purchaser and deliver in the manner, at the times, and to the extent directed by the Purchaser Contract Administrator, any property which is required to be furnished to Purchaser; and
- 36.3.8. Provide written certification to the Purchaser that the Vendor has surrendered to the Purchaser all said property.
- 36.4. The Vendor shall pay the damages due Purchaser as the result of termination within thirty (30) calendar days of notice.

Termination Procedure – If the Purchaser terminates the contract, the Vendor is required to deliver to the Purchaser any property produced to the point of termination as part of the contract performance. The steps the Vendor must follow once a notice of termination is received are delineated.

37. Covenant Against Contingent Fees

[This section is required to be included only when federal funds are being used for the purchase.]

- 37.1. The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of the Vendor.
- 37.2. In the event of breach of this section by the Vendor, the Purchaser shall have the right to either annul this Contract without liability to the Purchaser, or, in the Purchaser's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Covenant Against Contingent Fees – The Vendor warrants that no person or selling agent has been employed or retained to solicit or secure the contract. A firm cannot hire an individual to use "influence" to obtain a contract.

Disputes and Remedies

38. Disputes (required term)

[If this is a simple contract for \$10,000 or less only the following paragraph need be included.]

Both parties agree to exercise good faith in dispute resolution. Further, the Purchaser and the Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute.

[If this is a complex contract or is for more than \$10,000 use the following paragraphs.]

- 38.1. In the event a bona fide dispute concerning a question of fact arises between the Vendor and the Purchaser and it cannot be resolved between the parties with the aid of the Purchaser Contract Administrator, either party may initiate the dispute resolution procedure provided herein.

- 38.2. Time is of the essence in resolving disputes. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days.
- 38.2.1. Then, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after the three (3) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member.
- 38.2.2. Within three (3) Business Days of receipt of the initiating party's request, the responding party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
- 38.2.3. The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- 38.2.4. Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 38.3. Both parties agree to be bound by the determination of the dispute resolution panel. *Include this section whenever possible so arbitration will be binding upon parties.]*
- 38.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible *[If previous section on decision of dispute resolution panel being binding is omitted from the contract add: "Unless irreparable harm will result, neither party shall commence litigation against the other before the dispute resolution panel has issued its decision on the matter in dispute."]*
- 38.5. The Purchaser and the Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute.
- 38.6. If the subject of the dispute is the amount due and payable by Purchaser for maintenance services being provided by Vendor, Vendor shall continue providing maintenance pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

Disputes – When a bona fide dispute arises between the Purchaser and Vendor, remedy is provided via a disputes hearing. This dispute process will generally precede any court action.

39. Attorneys' Fees and Costs

- 39.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 39.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In

addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

Attorneys' Fees and Costs- General clause for payment of attorneys' fees

40. Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

41. Liquidated Damages

[If this section is not used, strike references in other sections, by searching for the terms Liquidated Damages]

41.1. Liquidated Damages - General

- 41.1.1. Any delay by the Vendor in meeting the ~~delivery date or installation date, maintenance or repair date, whichever is applicable and Standard of Performance and Acceptance date~~ set forth in this Contract will interfere with the proper implementation of the Purchaser's programs to the loss and damage of the Purchaser.
- 41.1.2. As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, the Purchaser and the Vendor, therefore, agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the following sections and the parties agree that the Vendor shall pay such amounts as liquidated damages and not as a penalty.
- 41.1.3. Liquidated damages provided under the terms of this Contract are subject to the same limitations as provided in the section titled Limitation of Liability

41.2. Liquidated Damages - Specific

- 41.2.1. If Vendor does not have the Equipment ~~delivered by the Delivery Date or installed by the Installation Date, whichever is applicable~~ agreed upon between the Purchaser and Vendor, then Vendor shall provide a revised ~~Delivery Date or Installation Date, whichever is applicable~~ and pay to the Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the specified ~~Delivery Date or Installation Date~~ and the date that Vendor actually ~~delivers or installs~~ the Equipment and Equipment is operational in accordance with the Standard of Performance and Acceptance an amount of ~~fixed dollar amount per day or percentage of total cost (purchase price plus applicable tax and shipping) of the delinquent Equipment per day~~
- 41.2.2. If the revised ~~Delivery Date or Installation Date, whichever is applicable~~ is more than [_____] (_____) calendar days from the original ~~Delivery Date or Installation Date, whichever is applicable~~ then by written notice to the Vendor, the Purchaser may immediately terminate the right of Vendor to ~~deliver or install~~ the Equipment and the Purchaser may obtain substitute Equipment from another Vendor. In this event, the Vendor shall be liable for fixed and agreed liquidated damages, in lieu of all other damages due to such delay, in the amount specified above, until substitute Equipment is ~~delivered or installed~~, or a maximum of [_____] (_____) calendar days ~~length of time that is appropriate for specific acquisition~~ from the original ~~Delivery Date or Installation Date~~, whichever occurs first.

[If using a section for a guaranteed response time for maintenance, use the following section.]

- 41.2.3. If Vendor's maintenance personnel fail to arrive at the Purchaser's installation site within *[two (2) hours or whatever was agreed upon]* after notification by the Purchaser that maintenance is required, the Vendor shall pay to the Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such non-responsiveness, for each hour between the agreed *[two (2) hours or whatever was agreed upon]* response time and the actual response time an amount of *[\$_____]* dollars *[(\$_____)]* per hour for each "late" hour or part thereof (prorated) beginning with the time of notification by the Purchaser and ending with the time that Vendor's maintenance personnel arrive at the Purchaser's Equipment site.

Liquidated Damages– To establish automatic damages because of Vendor performance delays.

42. Failure to Perform

If the Vendor fails to perform any substantial obligation under this Contract, the Purchaser shall give the Vendor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Vendor still has not performed, then the Purchaser may withhold all monies due and payable to Vendor, without penalty to the Purchaser, until such Failure to Perform is cured or otherwise resolved.

Failure to Perform– To establish that the State may withhold monies, beginning 30 calendar days after written notification that the Vendor has failed to perform any substantial obligation as stipulated in the contract

43. Limitation of Liability*(required term)*

- 43.1. The parties agree that neither the Vendor nor the Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim or demand based on patent or copyright infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages, retainages or any other such conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled OSHA/WISHA Termination for Default and Review of Vendor's Records are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 43.2. Neither the Vendor nor the Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Vendor or the Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Vendor, the Purchaser, or their respective Subcontractors.
- 43.3. If delays are caused by a Subcontractor without its fault or negligence, neither the Vendor nor the Purchaser shall be liable for damages for delays, unless the Equipment or Services to be furnished by their Subcontractors were obtainable on comparable terms from other sources in sufficient time to permit the Vendor or the Purchaser to meet its required performance schedule.
- 43.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Administration

44. Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

to **Vendor** at: *[Vendor Name]*
 Attention: [Name]
 [Street Address]
 [City]
 [State and Zip]
 [Phone and fax numbers]

to **Purchaser** at: State of Washington
 [Purchaser]
 Attention: [Contract Administrator/Officer, per Purchaser policy]
 [Purchaser Street Address]
 Olympia, WA 98504-XXXX
 [Phone and fax numbers]

Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four (4) calendar days after mailing. The notice address as provided herein may be changed by written notice given as provided above.

Notices – To define official addresses for formal notifications

45. Section Headings, Incorporated Documents and Order of Precedence

- 45.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 45.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
 - 45.2.1. Applicable federal and state statutes, laws, and regulations;
 - 45.2.2. Sections of this Contract *[Contract Number]*;
 - 45.2.3. Schedule A - Authorized Product and Price List, to this Contract;
 - 45.2.4. Exhibit A - State of Washington *[Purchaser Name]* Request For *[Proposal/Quotation/Quotation and Qualification]* *[(RFP)/(RFQ)/(RFQQ)]* for *[Description Of Acquisition]* dated *[Date]*;
 - 45.2.5. Exhibit B - Vendor's Response to the Purchaser, dated *[Date]*, including all written information provided with Vendor's response;
 - 45.2.6. The terms and conditions contained on Purchaser's purchase documents, if used; and
 - 45.2.7. All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, and other written representations the Vendor made available to the Purchaser and used to effect the sale of Equipment to the Purchaser, or

purports the Equipment is fit for a particular purpose or attests to the Equipment's engineering level, operating condition, functions, capabilities, or merchantability.

Contract Inconsistency – In the event of inconsistency between contract documents, the order of precedence of the documents should be stated. First, federal and state law prevails, then the contract; then, depending on the circumstances, either the Vendor's proposal, the Request for Proposals, etc.

46. Entire Agreement*(required term)*

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled Vendor Commitments, Warranties and Representations understandings, contracts, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

Entire Contract – To establish that the contract constitutes the entire contract and supersedes all previous discussions, bid processes, and contracts, except as provided in Vendor Commitments, Warranties, and Representations. Specific documentation such as Vendor proposals, Equipment and Software specifications, communications regarding goods and services to be provided, etc. should be included in the contract by reference or attachment, where Vendor assurances and performance questions are concerned

47. Additional Services and Equipment

[This option is intended to be utilized only for additions which are within the time, cost, and product scope of the original solicitation document; otherwise, a new competitive solicitation must occur.]

Purchaser and Vendor agree that additional Services and/or Equipment, which are appropriate to the scope of this Contract, may be added to this Contract (Schedule A hereto) by an instrument in writing, with the mutual consent of both parties. Such writing shall include a specific description of the additional Services and/or Equipment, pricing and additional terms and conditions as relevant. The additional Services and/or Equipment shall be available under the same terms and conditions established herein, unless otherwise agreed to in a signed writing.

48. Authority for Modifications and Amendments

No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the Vendor and the Purchaser. Only the Purchaser Contracting Officer or delegate by writing shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of the Purchaser.

Limitation of Authority – Only the Purchaser's delegate in writing shall have authority to alter or modify any clause or condition of the contract, and any change must be in writing signed by the delegee.

49. Purchaser Contract Administrator

The Purchaser shall appoint *[Name]* who will be the Purchaser Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Purchaser Contract Administrator

will manage this Contract on behalf of the Purchaser and will be the principal point of contact for the Vendor concerning Vendor's performance under this Contract. The Purchaser shall notify Vendor, in writing, when there is a new Purchaser Contract Administrator assigned to this Contract.

Contract Representatives – The contract should identify by name or by position the persons responsible for representing the Purchaser and the Vendor as Equipment and Services to be provided managers in matters related to the execution of the contract. These individuals will be accountable for Equipment and Services to be provided performance and results.

50. Vendor's Account Manager

The Vendor shall appoint[Name] who will be the Account Manager for the Purchaser's account. The Vendor's Account Manager will be the principal point of contact for the Purchaser concerning the Vendor's performance hereunder and for receipt of notices. The Vendor's Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities.

Contract Representatives – The contract should identify by name or by position the persons responsible for representing the Purchaser and the Vendor as Equipment and Services to be provided managers in matters related to the execution of the contract. These individuals will be accountable for Equipment and Services to be provided performance and results.

51. Independent Status of Vendor

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever, nor will the Vendor make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, chapter 23B.16 RCW, or Title 51 RCW.

Independent Capacity – The contract should state that the Vendor is independent and neither the Vendor nor Vendor's employees are to be considered employees of the state. The state legitimately does not have to pay employee taxes such as workman's compensation, FICA, and unemployment compensation for contractors.

52. Governing Law(*required term*)

This Contract shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

Governing Law – The contract shall be governed by the laws of the state of Washington. Since commercial law varies from state to state, it is important to include the governing law, particularly when dealing with out-of-state contractors.

Venue – The venue is the locality in which a trial would occur. Any lawsuit involving the contract would be filed in the county stated in this clause. For agencies in the Olympia area, for example, this is Thurston County.

53. Subcontractors

The Vendor may, with prior written permission from the Purchaser Contract Administrator, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of the Vendor's duties and obligations. In no event shall the existence of a subcontract operate

to release or reduce the liability of the Vendor to the Purchaser for any breach in the performance of the Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of the Vendor, and the Vendor further agrees to hold the Purchaser harmless from acts or omissions of the Vendor's Subcontractors, their agents, or employees subject to the limitations set forth in the Limitation of Liability section of this Contract. The Purchaser shall not be liable for any loss or damage resulting from personal injury, physical loss, harassment of employee, or violations of ~~the Patent And Copyright Indemnification~~ sections of this Contract occasioned by the acts or omissions of the Vendor's Subcontractors, their agents or employees. ~~The Patent And Copyright Indemnification~~ sections of this Contract shall apply to all Subcontractors.

Subcontracting – This section is used to define conditions under which the Vendor can subcontract work. Generally, the Vendor's proposal will identify the Subcontractors. When the service of a Subcontractor is required after award, and was not identified in the original contract, the prime Vendor must request advance approval from the Purchaser for use of the selected Subcontractor.

54. Assignment

- 54.1. With the prior written consent of the Purchaser, which consent shall not be unreasonably withheld, the Vendor may assign this Contract including the proceeds hereof: PROVIDED, That such assignment shall not operate to relieve the Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to the Purchaser that may arise from any breach of the sections of this Contract, its supplements, or warranties made herein including but not limited to, rights of setoff.
- 54.2. With the prior written consent of the Vendor, which consent shall not be withheld unreasonably, the Purchaser may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington: PROVIDED, That such assignment shall not operate to relieve the Purchaser of any of its duties and obligations hereunder.

Assignment-- To establish that neither party shall assign, sublicense nor transfer its rights, duties, or obligations without written consent of the other party. If vendor performance or financial condition is a problem, it may be necessary to keep Vendor assignment at the Purchaser's sole option

55. Publicity (required term)

The Vendor agrees to submit to the Purchaser, all advertising, sales promotion, and other publicity matters relating to this Contract or any Product furnished by the Vendor wherein the Purchaser's name is mentioned or language used from which the connection of the Purchaser's name therewith may, in Purchaser's judgment, be inferred or implied. The Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of the Purchaser.

Publicity – To establish that the Vendor will not use any advertising, sales promotion, or any other publicity matters wherein the State's name may be specifically stated, implied, or inferred without the consent of the State

56. Review of Vendor's Records (required term)

- 56.1. The Vendor and its Subcontractors shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving

matters in litigation related to this Contract shall be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within five (5) years from the date of expiration or termination of this Contract.

- 56.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within Thurston County. During the six (6) year period after the Contract term or five (5) year term following litigation, delivery of and access to these items will be at no cost to the State. The Vendor shall be responsible for any audit exceptions or disallowed costs incurred by the Vendor or any of its Subcontractors.
- 56.3. The records retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.
- 56.4. It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Vendor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from the Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

Records, Documents and Reports – Vendor shall maintain books, records and documents to reflect all direct and indirect costs expended in the performance of the contract for potential audit of billing statements.

General

57. Patent and Copyright Indemnification*(required term)*

- 57.1. Vendor will, at its expense, defend or settle any claim against the Purchaser that Equipment, Software, or work products supplied hereunder infringe any patent, copyright, utility model, industrial design, mask work or trademark. Vendor will pay resulting costs, damages and attorneys' fees finally awarded provided that Purchaser:
 - 57.1.1. Promptly notifies Vendor in writing of the claim; and
 - 57.1.2. Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 57.2. Vendor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by Purchaser, except costs paid to the Office of the Attorney General as legal fees. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor at its option and expense, either to procure for Purchaser the right to continue using the Equipment or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Equipment is enjoined by a court and the Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Equipment and refund its depreciated value. No termination charges will be payable on such returned Equipment, and the Purchaser will pay only those charges which were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of five (5) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of 365 days per year. In the event the Equipment has been installed less than one year, transportation to the initial installation site paid by Purchaser shall be refunded by Vendor.

- 57.3. Vendor has no liability for any claim of infringement arising from:
- 57.3.1. Vendor's compliance with any designs, specifications or instructions of the Purchaser;
 - 57.3.2. Modification of the Equipment by Purchaser or a third party without the prior knowledge and approval of Vendor;
 - 57.3.3. Use of the Equipment in a way not specified by Vendor; or,
 - 57.3.4. Use of the Equipment with Equipment not supplied by Vendor;
unless the claim arose against Vendor's Equipment, Software or Services independently of any of these specified actions.

Patent and Copyright Indemnification - To establish responsibility of both parties in event of infringement of a patent, copyright, or other intellectual property right.

58. Save Harmless(*required term*)

Vendor shall protect, indemnify and save the Purchaser harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from such claim, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, agents, or Subcontractors.

Save Harmless – This clause protects the state and/or the Vendor from negligence or omission on the part of the other party, per RCW 4.92.270. The Vendor holds the state, Purchaser, and Purchaser employees harmless from claims, suits, or actions arising from the negligence or omission of the Vendor while performing the terms of the contract. Standard indemnification language is provided in the "Contracts and the Indemnification Clause" pamphlet published by the Department of General Administration, Office of Risk Management. You may call (360) 902-7303 to request a copy of the pamphlet or to ask questions about this subject.

59. Insurance

[Insurance is to be required only when necessary for the type of purchase.]

- 59.1. Liability and Auto Insurance. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section with an insurance carrier or carriers licensed to conduct business in the state of Washington and approved by the Purchaser Contract Administrator, which approval shall not be unreasonably withheld. The minimum acceptable limits and types of coverage shall not be less than \$1 million commingled single limit per occurrence for each of the following categories:
- 59.1.1. Public liability covering the risks of bodily injury, property damage and personal injury (including death);
 - 59.1.2. General Business Liability; and
 - 59.1.3. Automobile liability (owned or nonowned) covering the risks of public liability and property damage.
- 59.2. Premiums on all insurance policies shall be paid by Vendor or its Subcontractors. Such insurance policies provided for the Purchaser pursuant to this section shall name the Purchaser as an additional insured and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have first been given to the Purchaser by such insurer.

59.3. Vendor shall furnish to the Purchaser copies of certificates of all required insurance within thirty (30) calendar days of the execution date of this Contract.

Businesses which provide services to the state must carry liability insurance to protect the state's interests. Contractual insurance in a commercial general liability policy provides coverage to protect the state from risks assumed by the Vendor, whether oral or written.

Other types of insurance such as employers liability, fidelity, vehicle liability, professional liability or errors and omissions may be included in a purchased service contract based on the scope of work to be performed. For more specific information on insurance requirements, call the Department of General Administration, Division of Risk Management, (360) 902-7303.

60. Industrial Insurance Coverage

Prior to performing work under this Contract the Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. The Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Vendor, or any Subcontractor or employee of the Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

When a state agency enters into a contract for a purchased service, it must ensure the state's interest if either the Vendor or someone employed by the Vendor is killed or injured while performing work under the contract. The answer to this question is determined by Washington's industrial insurance law, Title 51 RCW.

With few exceptions, Title 51 RCW holds the contracting Purchaser responsible for making sure that such coverage is provided. Exclusions are listed in RCW 51.12.020 and include sole proprietors, partners, corporate officers and others, unless they have selected optional coverage.

To promote compliance with Title 51 RCW and avoid unplanned financial liability for the payment of industrial insurance premiums, agencies should review RCW 51.08.070, RCW 51.08.180 and RCW 51.08.195 and determine whether a potential Vendor meets either the definition of "employer" or that of a "worker." Making this determination may require a complex analysis. To assist in determining whether the determination of "employer" or "worker" is applicable, please call the L&I Field Audit Program in Olympia at (360) 902-4752 or (360) 902-4769.

Agencies can verify a Vendor's compliance with Title 51 RCW by contacting the Vendor Registration Unit of L&I, Telephone: (360) 902-5202 in Olympia. In the event the Vendor is found to be noncompliant, the Purchaser may still enter into the contract but should notify the Vendor that no payments for service provided under the contract will be made until the Vendor furnishes evidence of full compliance. For long-term contracts, the Purchaser should require the Vendor to provide proof of continuous compliance with Title 51 RCW prior to release of final payment under the contract.

61. Licensing Standards

The Vendor shall comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

Licensing Standards – The contracting Purchaser must advise the Vendor to register with the Washington State Department of Revenue prior to performing work under the contract. Vendor will be issued a State Uniform Business Identifier (UBI) number to be used in payment of state taxes under the contract. Out-of-state contractors performing work in Washington State are required to have UBI numbers. Vendor agrees to comply with applicable federal, state, county, or municipal standards for licensing and accreditation to assure quality of service.

62. OSHA/WISHA

Vendor represents and warrants that its products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor further agrees to indemnify and hold the Purchaser harmless from all damages assessed against the Purchaser as a result of the failure of the items furnished under this Contract to so comply.

OSHA/WISHA– To establish that the Vendor warrants that its products are designed to meet federal and state safety and health regulations

63. UCC Applicability

- 63.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 63.2. To the extent this Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.
- 63.3. Notwithstanding the Section Headings, Incorporated Documents and Order of Precedence section of this Contract, in the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

64. Antitrust Violations

Vendor and Purchaser recognize that in actual economic practice overcharges resulting from antitrust violations are in fact usually borne by the Purchaser. Therefore, the Vendor hereby assigns to the Purchaser any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to the Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the price under this Contract.

Antitrust Violations-- To establish that the Vendor assigns claims for overcharges resulting from antitrust violations to the State

65. Compliance with Civil Rights Laws *(required term)*

During the performance of this Contract, the Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of the Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part under the Termination for Default sections, and the Vendor may be declared ineligible for further contracts with the Purchaser. The Vendor shall be given a reasonable time in which to cure

noncompliance. In addition to the cancellation of this Contract, Vendor may be subject to penalties under federal and state law.

Compliance with Civil Rights Laws- To establish that the Vendor shall not discriminate against any person for reason of age, sex, race, creed, color, or national origin according to Title VII of the Civil Rights Act.) Noncompliance or refusal to comply with the nondiscrimination laws, regulations or policies may result in rescission, cancellation or termination of the contract.

66. Quiet Possession and Usage

Vendor warrants that the Purchaser upon paying the amounts due hereunder and performing all other covenants, terms, and conditions on its part to be performed hereunder, may and shall peacefully and quietly have, hold, possess, and enjoy the Equipment without suit, molestation, or interruption.

Quiet Possession and Usage- To confirm State's right to peaceful use of the product upon payment of the amounts due as specified in the contract

67. Severability*(required term)*

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

Severability – To establish that if any provision of the contract is determined to be invalid, the other contract provisions are not automatically invalid.

68. Waiver*(required term)*

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties hereto.

Waiver – This clause states that a waiver of a term or condition is not to be considered an ongoing waiver of such term or condition, and that term or condition of the contract may be waived only by the written consent of both parties.

69. Treatment of Assets

69.1. Title to all property furnished by the Purchaser shall remain in the Purchaser. Title to all property furnished by the Vendor, for which the Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in the Purchaser pursuant to the section titled Title [and Ownership of Work Product] As used in this section Treatment of Assets, if the “property” is the Vendor’s proprietary, copyrighted works, only the applicable license, not title, is passed to and vested in the Purchaser.

69.2. Any property of the Purchaser furnished to the Vendor shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.

69.3. The Vendor shall be responsible for any loss or damage to property of the Purchaser which results from the negligence of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices.

- 69.4. Upon loss, or destruction of, or damage to any Purchaser property, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 69.5. The Vendor shall surrender to the Purchaser all property of the Purchaser prior to settlement upon completion, termination, or cancellation of this Contract.
- 69.6. All reference to the Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

Treatment of Assets – Title to all property furnished by the Purchaser and/or purchased by the Vendor as a reimbursable item under the contract shall remain with the Purchaser. The Vendor shall be responsible for loss to any such property and shall surrender the property upon completion of the contract.

70. Vendor's Proprietary Information

Vendor acknowledges that the Purchaser is subject to chapter 42.17 RCW, the Public Disclosure Act and that this Contract shall be a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that is claimed by the Vendor to be confidential or proprietary, must be clearly identified as such by the Vendor. To the extent consistent with chapter 42.17 RCW, the Purchaser shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, the Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, the Purchaser will release the requested information on the date specified.

Protection of Proprietary Information- To establish protection of Vendor's rights and interests in technical information, Software products, copyrights, etc { * Proprietary information can be defined as any data, information, and computer programs and usually includes corrections, modifications, revisions, and copies thereof, whether in machine readable or visually readable form, containing information which is the property of and confidential to the Vendor. It is the responsibility of the Vendor to identify such proprietary information }

Contract Execution

71. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

72. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

Counterparts: To provide for counterparts or duplicate originals of the contract.

In Witness Whereof the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Signature Blocks– To provide a statement of understanding and contract followed by signature blocks

Approved

State of Washington,
[Purchaser]

Approved

[Vendor's Name]

Signature

Print or Type Name

Title Date

Signature

Print or Type Name

Title Date

The signature block should not appear on a page by itself. A portion of the text of the contract should be included at the top of the page.

Only those persons with authority to bind the parties may sign the contract document. The Purchaser representative who signs a contract must have delegated signature authority. The contract is considered executed when all authorized parties have affixed their signature.

It is good business practice to have the Vendor sign the document first. This ensures that full contract has been reached by the Vendor with the terms, and the Purchaser can respond with its approval signature.

The contract is executed when it is signed by all authorized parties. Upon execution, signed copies of the contract should be provided to all interested parties including, but not limited to, the Vendor, the Equipment and Services to be provided manager, Purchaser contract office, and Purchaser accounting. In most instances, service may begin immediately or may be scheduled for a predetermined date.

Approved as to Form

State of Washington,
Office of the Attorney General

Signature

Print or Type Name

Assistant Attorney General

Title

Date

Each Purchaser is required to have its contract format approved as to form by the Attorney General's Office. Approval as to form by the Office of the Attorney General verifies legality of the contract instrument but does not imply concurrence in or approval of the content. Provided the contract format has been "approved as to form" by the Attorney General's Office, the assistant attorney general is not required to review each Purchaser contract when the approved format is used. Submittal to the assistant attorney general is required when varying from the approved contract format.

In addition to approval for form, it is often advisable to have contracts reviewed by the assistant attorney general for "substance and content". Some agencies submit all contracts to the Attorney General's Office for review of content; others submit only those on which there is a question as to substance or content.

Schedule A

Authorized Product and Price List

Schedule A
Authorized Product and Price List
as of _____ [Date]
for
Contract No. [XXX-XXX-XXX]
with
[Vendor]

Vendors are (Vendor is) authorized to sell **only the products identified in this Schedule A at the prices set forth in this Schedule A** under the above-referenced Contract.

[List information required to be included by the Vendor, e.g., Product Category, Products Name, Product Description, Price, Training fees, Installation fees, Upgrade fees, Maintenance Fees, etc.]

This Schedule may only be modified in writing by the Purchaser Contract Administrator.

Schedule B

MWBE Certification